



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
IZZI PIPELINE, INC.)

For Appellant: **John F. White**
Public Accountant

For Respondent: Crawford H. Thomas
Chief Counsel

Ferol T. Boucher
Counsel

O P I N I O N

This **appeal** is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in partially denying (to the extent of **\$1,741.62**) the claim of **Izzi Pipeline, Inc.**, for refund of franchise tax in the amount of **\$2,031.89** for the taxable **year ended August 31, 1970**,

The question presented is whether **Izzi Pipeline, Inc.**, was effectively dissolved on January, 31, 1970, for purposes of computing its franchise tax liability for the taxable year ended August 31, 1970.

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Izzi Pipeline, Inc. (hereinafter appellant) was a California corporation which ceased doing business on January 31, 1970. Its tax for the full taxable year ended August 31, 1970, had been prepaid. On January 15, 1970, appellant's counsel filed the corporation's certificate of election to wind up and dissolve with the office of the Secretary of State. Thereafter, on January 26, 1970, a **tax clearance** certificate was obtained from respondent, and a copy forwarded to the Secretary of State. The certificate expired on July 15, 1970, whereupon a new certificate was issued on August 3, 1970, and filed with that office. Appellant filed **its** certificate of winding up and dissolution with the office of the Secretary of State on August 11, 1970.

All of appellant's debts and liabilities had been paid by January 31, 1970. A document **bearing that date and entitled** "Conveyance in Liquidation" provided for the present conveyance of all remaining assets to the shareholders. However, a special meeting of the Board of Directors was held on March 25, 1970, in which a resolution was enacted setting forth specifically how various securities still retained by appellant were to be distributed to the shareholders.

Appellant filed a claim for refund of prepaid franchise tax in the sum of **\$2,031.89, i.e., seven-twelfths of** the prepaid tax for the full taxable year ended August 31, 1970, maintaining that it was dissolved on January 31, 1970. Respondent denied appellant's claim in part, concluding that the effective date of dissolution was August 11, 1970, and allowed a refund equivalent to one month's tax (\$290.27). This appeal was taken from that determination.

Appellant's claim is based upon section 23332 of the Revenue and Taxation Code which provides in part:

[A]ny taxpayer which is dissolved or withdraws from the state during any taxable year shall pay a tax **only for** the months of the taxable year which precede the effective date of such

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dissolution or withdrawal, according to or measured by (1) the net income of the preceding income year or (2) a percentage of net income determined by ascertaining the ratio which the months of the taxable year, preceding the effective date of dissolution or withdrawal, bears to the months of the income **year**, whichever is the lesser amount.

Appellant argues that the effective date of **dissolution was** January 31, **1970**, when it dissolved and no **longer** had the assets to enjoy the privilege of exercising its corporate franchise or to be active in any transaction for profit.

However, section 23331 of the Revenue and Taxation Code provides in part:

For the purposes of this article, the effective date of dissolution of a corporation is the date on which the certified copy of the court decree, judgment or order **declaring** the corporation duly wound up and dissolved is filed in the office of the Secretary of State or the date on which the certificate of winding up and dissolution is filled in the office of the Secretary of State,

In determining the date of dissolution, periods of less than **half** a month are disregarded. (Cal. Admin. Code, tit.: **18**, reg. 23331-23334, subd. (b).) **For these** reasons, the effective date of dissolution was treated by **respondent** as occurring on July 31, **1970**.

On several prior occasions we have considered similar factual situations and we have held that the explicit definition set forth in section 23331 must be used in applying the tax computation provisions of section 23332. (Appeal of U.S. Blockboard Corp., Cal. St. Bd. of Equal., July 7, **1967**; Appeal of Truck-A-Way Produce Express, Inc., Cal. St. Bd. of Equal., Feb. 26, **1969**; Appeal of Mount Shasta Milling Co., Cal. St. Bd. of Equal., Dec. **13**, 1960,) We conclude that we should adhere to those previous decisions.

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Appellant relies on Bank of Alameda County v. McColgan, 69 Cal. App. 2d 464 [159 P.2d 31], which held **that under** section 13(k) (1) of the Bank and Corporation Franchise Tax Act (the predecessor of section 23332 of the Revenue and Taxation Code), **the** effective date of dissolution of a banking corporation was when it had its permit to do business as a bank cancelled, and thus no longer enjoyed the privilege of doing business for the purpose of gain or profit. At the time of the Bank of Alameda County case the statute did not define the phrase "effective date of such dissolution." Subsequent to the decision in the Bank of Alameda County case the definition of "effective date of dissolution" was added to the statute and is now found in section 23331. Accordingly, the Bank of Alameda County case is not controlling as to taxable years subsequent to the statutory amendment defining "effective date of dissolution."

Accordingly, we must conclude that appellant is not entitled to any additional refund.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding; and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in partially denying (to the extent of \$1,741.62) the claim of **Izzi Pipeline, Inc.**, for refund of franchise tax in the amount of **\$2,031.89** for the taxable year ended August 31, 1970, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day
of November, 1973, by the State Board of Equalization.

William H. ..., Chairman
..., Member
John W. ..., Member
..., Member
..., Member

ATTEST: W. W. Hemlock, Secretary